

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

BETTINA MOFFITH)	
Claimant)	
VS.)	
)	Docket No. 251,241
RUSSELL STOVER CANDIES)	
Respondent)	
AND)	
)	
HARTFORD ACCIDENT & INDEMNITY)	
Insurance Carrier)	

ORDER

Claimant appeals from a preliminary hearing order dated July 25, 2000. The order, entered by Administrative Law Judge Bryce D. Benedict, denied claimant's request for temporary total disability benefits.

ISSUES

Claimant's application for review describes the issue as follows:

Whether claimant is entitled to temporary total disability and whether the defense relied upon by the respondent applies.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes the issue raised on appeal is not a jurisdictional issue and the Board, therefore, does not have jurisdiction to consider the issue on appeal from a preliminary hearing order. The appeal should, therefore, be dismissed.

Claimant had been released to work four hours per day. Respondent initially accommodated this restriction by allowing claimant to work four hours starting at the beginning of a shift that began at 2:30 in the morning. Claimant was later advised she would have to begin the shift at 6:30 in the morning. Claimant contends the change caused transportation problems between claimant and her husband. According to claimant, she is not able to work the new hours.

The ALJ found claimant had not acted in good faith in declining the new schedule. The ALJ states as reasons for his finding:

First, the Claimant's argument that she had to deliver the family car to her husband by 7:30 a.m. is suspect in light of her apparently having been able to work until 8:30 a.m. when the 2:30 a.m. shift was changed to six hours in length. [*Footnote omitted.*] Second, if the Claimant had the ability to use the bus to arrive at work at 5:15 a.m., it is not unreasonable that on a temporary basis she could have ridden the bus and then waited an hour for her shift to begin.

The ALJ concluded claimant is entitled to temporary partial disability benefits but declined to award temporary total disability benefits. As the Board views the ALJ's decision, it is a decision that claimant could work and is not temporarily and totally disabled.

The Board has limited jurisdiction in appeals from preliminary hearing orders. The Board is limited to review of allegations that the ALJ exceeded his/her jurisdiction. K.S.A. 44-551. K.S.A. 44-534a specifically lists as jurisdictional allegations that the ALJ erred in finding accident, injury arising out of and in the course of employment, timely notice, timely written claim, and certain other defenses. K.S.A. 44-534a. The other defenses are ones that go to the compensability of the claim. *Carpenter v. National Filter Service*, 26 Kan. App. 2d 672, 994 P.2d 641 (1999.)

The allegations of error in this appeal are not ones specifically listed in K.S.A. 44-534a and do not otherwise amount to allegations that the ALJ has exceeded his jurisdiction. The Board, therefore, does not have jurisdiction at this time to consider the issue claimant raises in this appeal.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the appeal of the preliminary hearing order dated July 25, 2000, should be, and is hereby, dismissed.

IT IS SO ORDERED.

Dated this ____ day of October 2000.

BOARD MEMBER

c: Jeff K. Cooper, Topeka, KS
Brenden W. Webb, Overland Park, KS
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director